On the whole, then, the recent North Dakota decision seems sound. The result in this instance throws the expense of the experiment on the carrier. But it is not the first time the carrier has been so burdened.[18] And, had the earlier decision declared the rates unconstitutional and the later declared them fair, the principle could have been invoked by the carrier to throw laboratory expenses upon the state.

# RECENT CASES

ANIMALS — TRESPASS ON LAND — DAMAGES. — Defendant's sheep trespassed on plaintiff's land and while wrongfully there developed scab, in consequence of which they were detained two and a half months in a barn and meadow on plaintiff's land under the provisions of a statute. Plaintiff's sheep which had been in contact with the trespassing sheep were also detained. There was no evidence that defendant knew the sheep were diseased. *Held*, distinguishing *Cox* v. *Burbidge*, 13 C. B. N. S. 430 and *Cooke* v. *Waring*, 2 H. & C. 232, that plaintiff might recover as damages for the trespass the keep of the sheep, depreciation of plaintiff's sheep, expense of dipping the sheep, and loss of profits. *Theyer* v. *Purnell*, [1918] 2 K. B. 333.

For discussion of this case, see NOTES, page 420.

ASSIGNMENTS — PRIORITIES — TRUSTS — RULE IN *DEARLE* VERSUS *HALL* NOT APPLICABLE IN DETERMINING PRIORITY BETWEEN *CESTUI QUE TRUST* AND SUBSEQUENT ASSIGNEE. — Solicitors executed a declaration of trust in favor of defendant in respect of a mortgage debt secured by a deed upon a reversionary interest in a share of personalty settled by a will. In breach of trust the solicitors purported to assign the same interest to the plaintiff, a *bonâ fide* purchaser. The plaintiff gave notice to the trustees under the will, and, having received possession of the title deeds, claims priority over defendant who had not given notice of his interest. *Held*, that the *cestui que trust* prevails, the rule in *Dearle* v. *Hall* having no application to a beneficiary under a declaration of trust. *Hill* v. *Peters*, [1918] 2 Ch. 273.

In England and in some American jurisdictions the obligee of a legal debt cannot transfer it to a *bonâ fide* purchaser free of latent equities. *Penn* v. *Browne*, Freem. C. 214; *In re European Bank*, L. R. 5 Ch. App. 358; *Bush* v. *Lathrop*, 22 N. Y. 535. *Contra*, *Murray* v. *Lylburn*, 2 Johns. Ch. (N. Y.) 441; *Winter* v. *Montgomery Gas-Light Co.*, 89 Ala. 544, 7 So. 773. By the weight of authority the assignee of an equitable interest likewise takes subject to all equities; and this is held even by courts which reject the rule in regard to legal obligations. *Clouette* v. *Story*, [1911] 1 Ch. 18; *Henry* v. *Black*, 213 Pa. 620, 63 Atl. 250. The principal case presents the question whether the fact that the assignee has given notice to the trustee or obligor, the *cestui que trust* not having done so, gives him priority in spite of the above rule. Where the question is between successive assignees for value in good faith, England and a number of American jurisdictions hold that the first to give notice prevails. *Dearle* v. *Hall*, 3 Russ. Ch. 1; *Jenkinson* v. *N. Y. Finance Co.*, 79 N. J. Eq. 247, 82 Atl. 36. *Contra*, *West Texas Lumber Co.* v. *Green County*, 188 S. W. 283 (Tex. Civ. App.). This rule rests upon the analogy to the duty of a vendee of chattels to take possession in order to make his title indefeasible. See *In re Phillips' Estate*, 205 Pa. 515, 522, 55 Atl. 213, 215. See also 25

tempted to show the rates confiscatory; but on motion this defense was stricken out. The court declined to pass in advance on the main question in the case.

[18] Compare the Adamson Law. Wilson *v.* New, 243 U. S. 332.

HARV. L. REV. 728. A *cestui que trust*, however, often has no right to the possession of the *res;* and moreover the purpose of a trust is to relieve the beneficiary of all duties. The principal case properly protects the *cestui* in his reliance upon the trustee.

CARRIERS — RATES — RECOVERY OF BY CARRIER. — In 1907 the legislature prescribed maximum rates for the carriage of coal. The carriers refused to comply with the act, and the state brought an action to enjoin its continued violation. An injunction was issued and affirmed without prejudice by the United States Supreme Court in March, 1910. After a period of experimentation the carrier reopened the case, and the injunction was dissolved by the United States Supreme Court in June, 1915. The carrier now seeks to recover from the shipper the difference between the statutory rate and an alleged reasonable rate for shipments made between the dates of the first and second decree of the United States Supreme Court. *Held*, that carrier could not recover. *Minneapolis, St. P. & S. S. M. Ry. Co.* v. *Washburn L. C. Co.*, 168 N. W. 684 (N. D.).

For a discussion of the principles involved see NOTES, page 428.

CONFLICT OF LAWS — JURISDICTION FOR DIVORCE — DOMICILE IN EXTRATERRITORIAL COMMUNITY. — The husband's domicile of origin was England, but since marriage the spouses had resided in the British Protectorate of Egypt with intent to make it their permanent home. On the wife's petition for divorce in England, *held* that the husband had acquired a domicile of choice in Egypt, and that the English court had no jurisdiction to entertain the proceeding. *Casdagli* v. *Casdagli*, 146 L. T. J. 3 (1918).

During the rule of the East India Company in India, the English courts held that a person of British nationality in the service of the company could acquire an Anglo-Indian domicile. *Bruce* v. *Bruce*, 2 B. & P. 229, note; *Forbes* v. *Forbes*, 23 L. J. (Ch.) N. S. 724; *Hepburn* v. *Skerving*, 9 W. R. 764. The doctrine was extended to cases of persons who went to India not in the service of the company but on private business of their own. *Attorney General* v. *Fitzgerald*, 25 L. J. (Ch.) N. S. 743; *Allardice* v. *Onslow*, 33 L. J. (Ch.) N. S. 434. But the cases of Anglo-Indian domicile were later held to be anomalous. See *Jopp* v. *Wood*, 34 L. J. (Ch.) N. S. 212, 219; *Ex parte Cunningham*, 13 Q. B. D. 418, 425; DICEY, DOMICIL, 140, 141, 337. Accordingly, until the decision in the principal case, the English doctrine has been that a British citizen could not acquire a domicile in a foreign country which granted extraterritorial privileges. *In re Tootal's Trusts*, 23 Ch. D. 532; *Abd-ul-Messih* v. *Farra*, 13 A. C. 431. *Cf. The Derfflinger*, 1 B. & C. P. C. 386; *The Lutzow*, 1 B. & C. P. C. 528. In breaking away from this doctrine, the court in the principal case is to be commended. Given an abandonment of the domicile of origin, the selection of a new place of residence, and the *animus manendi*, it would seem immaterial that the community in question does not possess the sovereign territorial power. *In re Allen's Will*, U. S. COURT FOR CHINA, SHANGHAI TERM, 1907, PAMPHLET; *Mather* v. *Cunningham*, 105 Me. 326, 74 Atl. 809. See PIGGOTT, EX-TERRITORIALITY, 1907 ed., 224–26; JACOBS, DOMICIL, § 361. Accordingly, in the principal case, the husband acquired an Egyptian domicile and became subject to that part of the Egyptian law which under the Protectorate was applicable to British subjects. See HALL, FOREIGN JURISDICTION OF THE BRITISH CROWN, 185–86; WESTLAKE, PRIVATE INTERNATIONAL LAW, 5 ed., 345–46; HUBERICH, DOMICILE OF PRIVILEGED FOREIGNERS, 24 L. QUART. REV. 448. Since the husband had lost his English domicile, the English court had no jurisdiction to grant the wife's petition for divorce. *Le Mesurier* v. *Le Mesurier*, 1895 A. C. 517; *Bater* v. *Bater*, [1906] P. 209. See 26 HARV. L. REV. 447.